Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

October Term, 1995

Honorable Irvin Harry Lyon,
Petitioner,
v.

Alabama State Bar,
Respondent,

Petition For A Writ Of Certiorari
To The Supreme Court of Alabama

PETITION FOR A WRIT OF CERTIORARI

Honorable Harry Lyon
Counsel of Record for Petitioner
1988 Chandalar Ct.
Pelham, AL 35124
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13 pp

QUESTIONS PRESENTED FOR REVIEW

1. Was your Appellant denied due process of law under the 6th and 14th Amendments to the U.S. Constitution in his cross examination of Judge Patricia M. Smith being limited by the Disciplinary Panel and were said Constitutional violations compounded by the fact that the Office of General Counsel of the Alabama State Bar Association specifically represented to Lyon and the Disciplinary Panel, prior to said October 21, 1994 hearing, that Judge Smith would not be a witness in the proceeding after the respondent was placed on notice of Lyon's desire to take the deposition of Judge Smith prior to said hearing and the fact that Judge Smith has never filed a complaint with the State Bar against Lyon?

2. Was Lyon denied his United States Constitutional rights under the 6th and 14th Amendments upon the Disciplinary Panel refusing to suppress the telephonic depositions of Judge and Mrs. Ralph Zehler, Martha V. Lyon and Sheila Haughey ?

3. Does the record on appeal contain any evidence, much less clear and convincing evidence as required by law, that Lyon violated any or all of the three (3) charges of

professional misconduct to which he was found guilty by the Disciplinary Panel #2, particularly in light of his protected rights under the First Amendment to the U.S. Constitution to exercise his freedom of expression, association and political speech and is your petitioner entitled as a matter of constitutional law to have a finding of fact and conclusions of law rendered by a disciplinary panel of the Alabama State Bar?

4. Does the two year probationary sentence imposed by the respondent upon your petitioner have a "chilling effect" on Lyon's United States Constitutional rights under the First Amendment so as to amount to a prior restraint on his freedom of speech, particularly political speech?

LIST OF INTERESTED PARTIES

All parties to this case are listed in the caption. The Alabama State Bar is a creation of the Legislature of Alabama, *Ala. Code* [sec.] 34-3-40,[1] *et seq.* (creating the Board of Bar Commissioners of the Alabama State Bar), and its actions in this case are taken by and under the authority and law of the State of Alabama. *Ala. Code* [secs.] 34-3-80, 34-3-81. Thus, 28 U.S.C. [sec.] 2403(b) may be involved and the Attorney General of Alabama, while not a party to this case, has been served with this petition as required by Rule 29.4(c) of the Rules of this Court.

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[1]Unless otherwise noted, citations to the statutory law of Alabama are to the *Code of Alabama (1975)*, as amended, adopted as the official codification of the acts of the Alabama Legislature on February 17, 1977, by Act No. 20, Alabama Acts, Regular Session 1977.

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OPINIONS BELOW

The Supreme Court of Alabama's affirmance, without opinion, of the Disciplinary Panel's Order of suspension and probation is not reported and is reproduced in the Appendix at page App. 6. The Supreme Court of Alabama's denial of Petitioner's Application for Rehearing and Brief without opinion is not reported and is reproduced in the Appendix at page App. 5. The Order of suspension and probation of the Disciplinary Panel of the Alabama State Bar, which contains no findings of fact or conclusions of law, is not reported and is reproduced at page App. 1 of the Appendix.

[Note: In compliance with Rule 14(1)(g) of this Court's Rules, Petitioner would show unto this Court that the Alabama Rules of Appellate Procedure, which governed this case in the court below, state that "[a]ssignments of error are not required. Statement of the issues presented on appeal in the appellant's brief as required by Rule 28 shall be sufficient." Rule 20, Ala.R.App.P. Therefore, your petitioner has published in the Appendix to this writ at page App. 22-25 the issues as raised verbatim in his brief to the Alabama Supreme Court. Please note that the issue of telephonic depositions was raised before the Disciplinary Panel and in a written objection and motion to strike same before the Alabama Supreme Court, said motion to strike being denied but issue preserved for this Court, App. pages 12-21.] Therefore, all of the United States Constitutional issues contained herein are, as a matter of law, properly preserved for this Honorable Court's review.

JURISDICTION OF THIS COURT

The appellate jurisdiction of this Court under 28 U.S.C. [sec.] 1257(3) is invoked in this case. The Alabama Supreme Court's decision (App. 6) and October 19, 1995 order overruling petitioner's application for rehearing (App. 5) necessarily denied petitioner's First, Sixth and Fourteenth Amendment challenges to the findings of guilty and prior restraint of his political speech as evidenced by the Order of suspension and probation by the Alabama State Bar in the underlying attorney disciplinary proceedings. The question of whether the findings of quilty in the instant attorney disciplinary proceedings amount to an impermissible infringement and violation of petitioner's federal constitutional rights under the First, Sixth and Fourteenth Amendments to the United States Constitution was presented to both the Disciplinary Board of the Alabama State Bar and the Supreme Court of Alabama, and the decisions of the Supreme Court of Alabama on those questions are properly reviewable by this Court on certiorari.

Section 25 of the Judiciary Act of 1789 granted this Court jurisdiction over and the power to review any "final judgment or decree in any suit" rendered by the highest court of any state in which suit could be brought. 1 Stat. 73, 75. The present version of section 25 applicable to this case, 28 U.S.C. [sec.] 1257(3), grants the Court jurisdiction to review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had by writ of certiorari...where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity

is specially set up or claimed under the Constitution, treaties or statutes, or commission held or authority exercised under, the United States."

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The involved provisions of the U. S. Constitution and the Code of Professional Responsibility of the Alabama State Bar are the First, Sixth, and Fourteenth Amendments to the United States Constitution and Disciplinary Rules 8.4(c), 8.4(d) and 8.4(g) of the Code of Professional Responsibility of the Alabama State Bar, Rule 52 of the Alabama Rules of Civil Procedure and Rule 12(f)(2) of the Alabama Rules of Disciplinary Procedure. [Note: Petitioner was found not guilty of four (4) other provisions of the Alabama Code of Professional Responsibility in ASB-93-306 and due to irrelevancy and immateriality are not referred to herein in compliance with Rule 24(6) of this Honorable Court except to show unto this Court that the true purpose of prosecuting your Petitioner was motivated by the Respondent's desire to quash his First Amendment rights of political speech.

STATEMENT OF THE CASE[1]

As Lyon was found not guilty of the two charges contained in the two amendments to the original complaint, as well as not guilty of two charges contained in the original complaint, factual matters Lyon sees as concerning those charges have been omitted for the sake of judicial economy and brevity.

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[1]As there were no findings of fact and conclusions of law by the State Bar Disciplinary Panel and no opinion rendered by the Alabama Supreme Court, your Petitioner does not know upon what facts, if any, he was found by said Disciplinary Panel to have violated as to the three (3) provisions of the Alabama Code of Professional Responsibility to which he was found guilty.

The original complaint filed by the State Bar against Lyon contained twenty-nine (29) paragraphs of an alleged factual basis contending that Lyon violated five (5) rules of the Alabama Code of Professional Responsibility. In a vain attempt to force Petitioner into a plea bargain, the Respondent tacked on two amendments to its original Complaint. Lyon's testimony was clear and to the point in addressing all of the allegations he was faced with in both the original and amended complaints that he did not violate any of the Alabama Rules of Professional Conduct as alleged in same. To be succinct, Lyon testified as follows, to wit: "I did not violate any of the provisions of the Code of Professional Responsibility of the Alabama State Bar in this matter" (emphasis added).

The initial Complaint against Lyon was brought by his ex-wife, Martha v. Lyon, who had left and divorced him due to petitioner's request that she help him mend the political fence with a former female political opponent, Honorable Patricia M. Smith, District Court Judge of Shelby County, Alabama on May 11, 1989. Lyon made this request of his ex-wife on the advice of political friend and Shelby County Attorney, former State Senator Frank "Butch" Ellis, Jr. as Senator Ellis realized that Lyon, who had been previously labeled "nigger lover" in his 1980 race for Judge Smith's office, would need her political support to have any chance of being elected to a newly created District Court Judgeship in Shelby County, Alabama, to which Judge Smith would be the presiding judge thereof due to her seniority.

As a result of that 1980 race some people in predominately white Shelby County, Alabama, hated

Lyon that he didn't even know. Though Lyon is Caucasian, he attended predominately black Miles College School of Law in Birmingham, Alabama and it was that fact that gave credence to the "nigger lover" label cast upon Lyon in his first judicial campaign which Lyon lost by a 5-1 margin . Prior to, and on the advice of former Shelby County attorney W. Eason Mitchell, entering the race for District Court Judge in Shelby County in 1980, Lyon and Judge Smith had become close personal friends. When the election was over, Judge Smith, who had won the election, retaliated against Lyon by striking his name off of the district court appointment list. [Lyon had betrayed Judge Smith's trust and friendship by breaking a promise of political support made to her by Lyon prior to the 1980 race and Lyon blames himself for the aftermath of what happened to him as a consequence of that broken promise.] Lyon sought out the political help of then Circuit Judge Kenneth Ingram, who is now an Alabama Supreme Court Justice that did not participate in that Court's no opinion decision, former attorney and now Circuit Court Judge Oliver Head and former Shelby County Circuit Judge Harold Walden in an attempt to change Judge Smith's attitude and mind about her retaliatory actions. In 1981 Judge Walden arranged a meeting in his office, that he did not attend, between Judge Smith, Lyon and Lyon's legal associate, Honorable Mike Blalock. At that meeting Judge Smith never addressed the court appointment issue but blew up in an emotional tirade and reminded Lyon that he had promised to politically support her and furthermore that she had found out he had broken his promise of political support and would be a candidate for her job while she was in labor with her first born child. Judge Smith's child was born with

a learning disability and Lyon has been told by several people that she blames him for her child's condition as a result of her being told of his betrayal of her trust and their friendship by her secretary, Margaret Booth Smith, while she was in the hospital. Lyon also understood the political retaliation he received from Judge Smith after the 1980 election was due to Judge Smith's perception of him as a future political threat. At the hearing on October 21, 1994, Judge Smith testified she now "recalls" having just had her baby before being informed of said broken promise. After the emotionally traumatic 1981 meeting in Judge Harold Walden's office Lyon had no political or personal communication with Judge Smith until January of 1988 when Lyon sent Judge Smith a letter . The second letter to Judge Smith was dated June 27, 1989, some 529 days after the first letter. The record reflects that Lyon stated under oath that the factual matters contained in all of his correspondence with Judge Smith are true and correct. Lyon's amended answer to respondent's complaint (App. 1)) as well as his testimony at the October 21, 1994 hearing was clear that he relied on his First Amendment Right to Freedom of Speech under the United States Constitution to exercise his political speech throughout the entire case against him, whether it be written or spoken, and that all of his speech as far as he knew, was basically political in nature. The State Bar entered said correspondence into evidence as a composite exhibit but limited its admissibility to the number of letters sent by Lyon to Judge Smith in its attempt to show that Lyon harassed Judge Smith and <u>specifically</u> not as to the truth of the matter contained in said letters. The record reflects that Lyon addressed and sent to Judge Smith a total of 45 letters from January

13, 1988 until the date of the October 21, 1994 hearing which averages out to one letter every 55 days [1]

[1Lyon did not introduce several other letters that would have rebutted Judge Smith's testimony regarding court appointed cases because he had been told, along with Disciplinary Panel #2, by the State Bar, that Judge Smith was not going to be a witness against him.]

During the October 21, 1994 hearing, the Office of General Counsel of the Alabama State Bar (hereinafter referred to as "OGC") did make references to certain portions of the letters in questioning Judge Smith . The record also contains the very first correspondence between Lyon and Judge Patricia M. Smith, a letter sent to Lyon from Her Honor dated February 5, 1979 which contains the following, to wit:

"I have enjoyed working with you since you came to Shelby County and *I must say that I am impressed with your professionalism in the practice of law"* (emphasis added)

As Lyon maintains his correspondence with Judge Smith is protected speech under the First Amendment to the United States Constitution, primarily political speech, the following is a list of dates and quotations from all of Lyon's letters to Judge Smith which were made a part of the record to show the political nature and intentions of Lyon and that same were in no way harassment but rather an attempt to mend the political fence with Judge Smith and attempt to overcome the hurt feelings of the past as well as create an historical record of political-judicial events, to wit:

January 13, 1988: "I have worked too hard and my family has suffered enough to overcome the aftermath of 1980 in which I was painted the villain".

June 27, 1989:"Any reference I may make as to my political background in this (i.e. 1990 race for District Court Judge of Shelby County, Alabama) campaign will be geared to show the public the sacrifices which my family has made to the development of a two-party system in Alabama and desire that I achieve my goal of serving the public in a judicial capacity".

September 6, 1989: "As proof that my concern has merit, please be advised that Nancy Wilstach with the Birmingham News has twice approached my campaign manager, Ben Heyward, asking him about my opinion of you and whether our 1980 race will cause problems if I am elected". "Believe me, if I am fortunate enough to be elected next year, I only want peace, quiet, regular office hours and the $71,000.00 per year salary and retirement benefits".

September 11, 1989:"The purpose of writing letters as opposed to a phone conversation or office meeting is that the last time we discussed politics in 1981 in Harold Walden's office, you became very angry. I did not and do not want a confrontation with you. The aftermath of the 1980 race was felt in the 1984 campaign and my 1988 race".

September 25, 1989:"I will respect your wishes and delete from the article any reference to you or rumors about you. Should you desire, in the future, to have the rumors concerning yourself addressed in a newspaper setting, please let me know and will be more than happy to make the appropriate accommodation".

October 12, 1989: "As you are aware, my column in the Shelby County Reporter is political in nature and you, as well as all our Judges, are a politician"; "If I am fortunate enough to get elected next year I want

you to know that it would be my honor to serve as your 1992 campaign manager".

October 23, 1989: "Eason Mitchell is not your friend.....I don't know what your recollection is of what you said to me in Judge Walden's office but I'll not only never forget what you said but the manner in which you said it. I don't ever want to see you in that state of mind again. Mike Blalock, who was in the office with us, commented to me after the ordeal that if you had had a knife in your hand, I wouldn't have been able to walk out of there alive".

November 3, 1989:"Shelby County District Judge Patricia M. Smith is one of the finest District Judges in Alabama".

November 17, 1989:"One day Janie Shores is going to retire and her spot will be sought by a female just as Oscar Adam's position will be sought by a black, namely Ralph Cook....Eason Mitchell is a "bagman" for Lanny Vines and while they have had a fishing trip in Alaska together, which Eason appears to be especially proud of, Eason is not respected by anyone and he would politically hurt you if he could because of your 1982 endorsement of his opponent".

November 20, 1989: "You are making me work hard for that forgiveness....I've got too much money invested in postage stamps and time to give up now.....If I have to borrow money to rent a billboard on highway 31 south in Pelham, publicly asking for your forgiveness, I'll do it".

November 21, 1989:"I at least hope that November 20th letter made you laugh.....communicating to you via letters is probably the only way you would ever allow me to completely express myself without cutting me off on the issue of your feelings".

November 29, 1989:"Cardinal Richilieu in 1648 said "Give me a man who has spoken 3 words and I'll give you 10 reasons to hang him" (emphasis added).

December 6, 1989:"As a courtesy to you, enclosed please find a copy of my upcoming article, scheduled for publication (i.e. Shelby County Reporter) on December 20th, entitled WHAT WILL SANTA BRING OUR LOCAL POLITICIANS?..As my Christmas gift to you, this is the last letter you will be receiving from me regarding politics for the year 1989....On behalf of Daxton, Alexandria and myself, we wish you and your family a Merry Christmas and Happy New Year".

December 13, 1989:"I just received your December 4th letter today....The drug rumor on you is very rampant...If you ever want me to publicly address any specific rumor regarding yourself, all you need do is ask".

January 4, 1990: "In my spare time I've been writing a transcript about my political history and experiences. The title? NEVER BREAK A PROMISE TO AN ANGEL."

January 7, 1990: "My biggest concern is to thwart, in advance, the efforts by my opponents and their supporters to successfully con-vince the voters of Shelby County that you would be opposed to me getting elected. That line, incidentally, was used with great effect by Bill Rabren in 1984" [Bill Rabren was a former Shelby County Circuit Judge who was removed from the bench, inter alia, for publicly referring to Lyon as "Nigger Lover" and former black Alabama Justice Oscar Adams as "Nigger" in their 1988 race for a place on the Alabama Supreme Court] In the

end, I pray I'm just thought of as a Judge and Your Friend.

January 17, 1990:"Politics, as you are aware, is a very dirty business. Had I known the realities before I qualified to seek your office in 1980, I would have never gotten involved. The other day I had a local politico seriously tell me at the Pelham Post Office: 'Harry, it speaks highly of you to have never won a campaign', my response was: 'Please, speak low, speak low!".....Its bad enough having to pay for the sins you did commit without having to suffer for those you never did. If nothing else comes out of all of this, please BELIEVE that I never put out the Shelly rumor on you".

January 29, 1990: "Dick Bell gave me a check last week for my campaign.....Also in 1982. you and Buddy, along with Judge Ingram and others, endorsed Armstrong over Eason in the run-off. In closing I want to thank you both for your patience and consideration of my political problems. Maybe one day we can find a cure for political revenge".

February 12, 1990:"Have you ever heard the old saying "LOVE CONQUERS ALL". In the newspaper I have declared the week of February 14th LOVE YOUR LAWYER WEEK. We will hopefully be spending the next six or more years working with one another on a daily basis and it has been my motive to show you every consideration".

March 28, 1990: "Enclosed please find an advance copy of my final column which will appear next week in The Shelby County Reporter. Because your name appears in this article, I wanted to make sure you did not find any portion of it objectionable" (R-707).

April 18, 1990: "I know that until I got the job at The Shelby County Reporter, Rochester (i.e. Judge

John E. Rochester) was not supporting my candidacy because he was angry with me over those bumper strips 'SCARED? VOTE STRAIGHT REPUBLICAN!'....The bottom line is that the character defamation job done on me by your supporters and my political enemies, past and present, can best be offset by you. As far as what you may have said about me in the past, I fully understand why you 'took those positions'....Whoever came up with the line 'HELL HATH NO FURY AS A WOMAN SCORNED' probably knows you quite well!".

May 1, 1990: "To make sure Mrs. Oscar Adams, who will probably be at the convention (i.e. New South Convention) no longer has any hurt feelings over my 1988 campaign, I sent her a dozen roses today. Justice Adams and I never really had a problem. He knows I could have accepted the contributions and published our photographs but, when it came down to it, decided to invest in the future by not "crossing the line"....As to Judge Ingram, I informed Mr. Bell, that he is the most color blind and fair jurist, next to you, that I have ever known".

May 9, 1980: "In 1990, my editor, Allison Large, will be covering the FOP forum this Thursday. In 1980 I was made the victim of "THE WORD". For the past year and here in 1990, I have politically speaking, been THE WORD.....All I ask of you in the future, is that when anyone attempts to cause you to have bad feelings toward me, PLEASE, consider the evidence and NOT the hearsay or false rumor".

June 7, 1990: "It was January 9, 1979, the day after Daxton was born. I talked with you in the hallway outside of the courtroom and told you of my financial problems concerning lack of an adequate amount of health insurance to cover the premature birth. You

listened intently and then excused yourself and went into Billy Hill's office who was then the District Judge. There were only three cases for an appointed lawyer and there must have been six or seven of us (i.e. lawyers) in there in hopes of receiving one case. Billy appointed me to all three cases. You did that for me[2] (emphasis added). Because of Billy's kindness, I never wrote about him in a negative way, even though he did clean out his office bank account in giving bonuses to Bob Williams, Bob O'conner, etc. as political payoffs right before he left the D.A.'s Office. But for that one act of kindness, I would have had a field day using my pen with Billy Hill".

[2: Hence the title of Lyon's book project: *NEVER BREAK A PROMISE TO AN ANGEL*]

June 12, 1990: "After enduring the emotional trauma of a divorce, a flood, a political loss and life in general, I feel the only thing I have had any success with is in getting you to be my friend again and helping Butch Ellis, the "good guys" and Ken Ingram politically...I'm staying with letters as a form of communication because I don't want to interrupt you at work or bother you at home with phone calls or visits".

June 20, 1990:"You know, Patti, in politics as well as life in general, its all what other people "say" about you".

[LETTER TO LYON FROM JUDGE SMITH:
June 26, 1990: "I am returning your check in the amount of $100.00, made payable to the campaign to re-elect Patricia M. Smith. I appreciate the compliments about my job performance".]

July 9, 1990: "I'll never forget January 9, 1979. Had I known how jealous Vennie was capable of being, I

would never have expressed my opinion of you to her after making your acquaintance. I have learned it is better, at least in politics, to not take things too seriously".

July 24, 1990:"If there are any statements of fact that you disagree with in any of the letters I have sent you, then you need to specifically let me know in writing . As I wrote you sometime ago, the title is NEVER BREAK A PROMISE TO AN ANGEL, by Harry Lyon, The "Alabama Nigger Lover"...About a year ago I suggested to Butch that if I could get the legislation changed re: the new District Judgeship, then with the power of the incumbency, I could probably win an election. Butch was thwarted by John E. Rochester who was looking out for John E. Rochester and I think using you to do it...Let us hope that Governor Hunt, a primitive Baptist preacher, will look past "nigger lover", "racist", liberal Republican" and other false labels cast upon me when making this appointment and will appoint the "most qualified" candidate, namely, yours truly. (At least that's what over 500,000 voters said in 1988 when I ran against a so called, according to one of our Circuit Judges (i.e. Bill Rabren) at that time "nigger").

[LETTER FROM JUDGE PATRICIA M. SMITH TO LYON:

July 31, 1990:"You asked for my forgiveness. I accepted your apology. Please accept this letter as another affirmation of my acceptance of your apology (emphasis added)...I wish you success in whatever you pursue".]

August 1, 1990: "I have been extremely considerate of your position and feelings this past year and now there

is something you can do for me. In Judge Walden's office in 1981 you told me how you found out I was planning to run for your office. As I recall, Margaret Booth told you right before you went into labor.....You see, Patti, your decision to endorse Armstrong in 1982 was the right decision after all. Eason didn't want to take on an incumbent alone. He had led me to believe at that time, his supporters would endorse my candidacy. When he found out he couldn't run until 1982, he switched allegiances to you out of his own special interest".

August 2, 1990:"In regard to your July 31, 1990 letter, if the flower and sweatshirt were inappropriate gestures, why did you come by the Shelby County Reporter and thank me for them....I have a duty in writing about anyone not to be reckless in regards to publishing the truth (emphasis added). I just want to be as accurate as humanly possible based on my knowledge, information and belief".

September 17, 1990: " Being kind and considerate to one that has treated you like an enemy is never "inappropriate"...I have absolutely no malice toward anyone".

October 18, 1990: "I talked with Margaret Boot-Smith the other evening and she told me that you now recognize me as a "super nice guy"....I had to stay in constant contact with you to insure that I achieved my goals of informing you of the motives of others that did not have my best interests at heart as well as your own and to neutralize those that have successfully, until now, played us against each other...I had also become sick and tired of seeing you used as a political shield for others to hide behind as they threw political rocks at me. In particular, I found it quite disgusting that John E. would use you the way he did at Butch's lakehouse

in 1988 to further his own political career. That was quite embarrassing for both of us....It has been in our best interest to reestablish that friendship and trust. Eason Mitchell and his cronies, including John E., never wanted to see that happen. Your skirt had been a real safe place to hide behind in promoting their own personal political agendas...I've also learned that anger hurts the one that has it more than anyone else".

December 5, 1990:"My only hope for a robe now is to fill the vacancy which will occur when Judge Ingram moves up to the Supreme Court...Even though you told lies about me, hurt me professionally and financially, I LOVE YOU. Please feel free to quote me...Eason Mitchell and others are on notice not to originate anymore sexist and vulgar remarks regarding yourself, so I have gained you, and the office you hold, a higher level of respect than you had 14 months ago" .

January 3, 1991: "I know all these letters I've sent you have had a very positive effect because Judge Crowson would not have sent a letter to Governor Hunt supporting me for the Civil Appeals position if you opposed the idea in my opinion".

January 11, 1991:"I was informed last night that B.J. Russell was appointed to the Court of Civil Appeals and Bob Williams got the job as Public Defender. By the time you receive this letter, you will in all probability, have been contacted by Sonny Conwell, Butch Ellis and Bill Matthews regarding my position as relates to court appointed cases from District Court. A year ago I suggested that you begin appointing me to cases after I apologized to you for hurting your feelings as you had expressed them to me when you threw your temper tantrum in Judge Walden's office in 1981....I will not "pop up" on you in your office. I have always

treated you with dignity and respect" (emphasis added).

January 14, 1991:"I was informed by a member of our bar association that you made the comment "Poor Harry, he's out of touch with reality". If you did make that statement then Your problem is that you don't want to deal with the reality of the past or present...The sad reality is that upon my informing Vennie that I had apologized to you, she proceeded with a divorce".

March 14, 1991: "Two of my biggest supporters in publishing this book (i.e. NEVER BREAK A PROMISE TO AN ANGEL) have been our very own Judges, D. Al Crowson and Oliver Head. As the first Republican member of our Bar Association, allow me to close by welcoming you to the political party of the future, the Alabama Republican Party".

April 19, 1991: "In closing, I respectfully submit, that there is absolutely no valid reason for any attorney's fee petitions to be held up two months for payment".

May 16, 1991: "Politics and personalities are one thing, while practicing law and making a living is another".

May 29, 1991: "I have waged a very hard fought battle just to receive fair treatment as a member of our bar. You know the truth".

June 6, 1991: "I have not had a response from you regarding my desire to serve on the juvenile guardian ad litem panel. Judge Crowson told me to take this matter up directly with you. I have sent you two letters regarding this issue. If you would rather discuss this issue in person, I would appreciate an office appointment at your earliest possible convenience. Don't let the "word" out, but as a matter of my

political columnist public record: I NEVER MET A WOMAN I DIDN'T LOVE".

June 10, 1991: "I find it very frustrating to not be given an explanation as to why you refuse to help me qualify to serve on the guardian ad litem panel....I phoned Judge Crowson who told me it was best to deal with you directly. I sent you three letters regarding this issue and asked, if you didn't want to give me an explanation in writing, to set up an office appointment at your earliest possible convenience. I have yet to hear from you".

LETTER TO HONORABLE FRANK "BUTCH" ELLIS, JR. WITH COPY TO JUDGE PATRICIA M. SMITH:

August 26, 1994:"In accordance with our phone conversation today, I am, at your behest writing you this letter and, again at your direction, sending Patti Smith a copy of it....The only contact I have had with Patti was politically and personally motivated in an attempt to regain a platonic relationship which I lost as a result of breaking a promise of political support as a direct result of being manipulated by Eason Mitchell. Those efforts were a result of your directions to me on May 11, 1989.....Because of what Patti did for me on the day my son was born, I SHALL ALWAYS LOVE PATTI and I'm proud of that fact....The bottom line: YOU CAN GIVE PATTI A ROSE, <u>BUT YOU CAN'T MAKE HER SMELL IT"</u>.

Lyon acknowledges that if he hadn't run for office the first time in 1980 and experienced the retaliatory aftermath thereto , his subsequent political experiences never would have occurred but blames himself for breaking a promise of political support to Judge Smith though he didn't violate the Alabama Code of

Professional Responsibility when he did it. Lyon appropriately apologized to his former friend and political opponent, Honorable Patricia M. Smith, at the October 21, 1994 hearing if anything he ever did or said hurt her feelings. The record reflects Lyon never had any intentions of harassing, annoying or alarming Her Honor. The record further reflects that in spite of a rather stormy platonic and political relationship, neither Lyon or Judge Patricia M. Smith ever filed complaints against one another. It is a paradox that Lyon's wife, who graduated law school but failed the Alabama Bar exam four times, was able to successfully manipulate the respondent into conducting its witch hunt which led the respondent to subpoena the private correspondence between your petitioner and Judge Smith in order to damage your petitioner professionally, politically and personally.

The respondent,"OGC", represented to Lyon and the Disciplinary Commission prior to the October 21, 1994 hearing, upon learning that Lyon intended to take Judge Smith's deposition, that Judge Smith would not be a witness against Lyon. Therefore, Lyon did not take Judge Smith's deposition. During the middle of the hearing, the "OGC" surprised Lyon and the Commission with Judge Smith's appearance and testimony.

The State Bar also alleged that Lyon was denied a pistol permit by the Shelby County Sheriff's Office because of vulgar, abusive and bizarre responses which Lyon made on his pistol permit application. The State Bar further charged that in response to the denial of Lyon's pistol permit application, he began a campaign of harassment, intimidation and political vendetta against the Sheriff of Shelby County. Lyon testified those charges were not true. Lyon further testified that

the real reason Sheriff Jones denied the pistol permit application was in order to embarrass Lyon and this fact was documented with a letter to Sheriff Jones from Lyon dated October 2, 1991. Furthermore, Lyon testified that Sheriff Jones denied said permit in retaliation for Lyon's political support of former Sheriff and incumbent Buddy Glasgow in the Shelby County race for Sheriff against Jones. The only reason Sheriff Jones gave Lyon for denying the gun permit was his "gut feeling". Sheriff James Jones has a reputation for being an alcoholic and being politically arrogant. Sheriff Jones clearly abused his authority as Sheriff to deny Lyon a pistol permit because Lyon has no criminal record and has had a pistol permit since he was twenty-one years of age. To prove that Lyon was not a threat to anyone, he voluntarily had a psychological evaluation which reflects he is in excellent mental health and not a threat to society or his clients as a result of a mental illness. As part of the probationary sentence imposed upon Lyon, he underwent a second psychiatric examination and after being tested and evaluated, Lyon became the only two time certified sane member of the legal profession in Alabama.

Lyon was charged by the respondent with publishing, at his own expense, two newsletters, THE SHELBY NEWS and THE WORD . The State Bar further complains that Lyon furnishes to the public, without cost, theses publications. The State Bar complains that it is opposed to Lyon's exercise of his legitimate First Amendment right to political speech and claims said speech is attributable to an alleged addiction to alcohol and/or other intoxicating drugs or substances. Lyon testified that he did publish the two newsletters and made them available to the public at no

cost and that the publication of same is political speech and therefore protected speech under the First Amendment to the United States Constitution . Lyon further testified that he doesn't use illegal drugs and never prepared his publications while under the influence of alcohol.

During the period of events made the basis of the charges against Lyon, he wrote political commentary for three Alabama newspapers which sharply criticized public officials, including members of the judiciary. Lyon was the first candidate for a place on the Alabama Supreme Court to run as a republican in 1982 to develop a two party system in Alabama. The "NIGGER LOVER" label cast on Lyon in his 1980 race for District Judge stayed with Lyon in his 1982 race for the Alabama Supreme Court, his 1984 race as a republican in a race for Circuit Court Judge of Shelby County, Alabama, his 1986 race for Lt. Governor of Alabama and came to an end in 1988 when Lyon ran against black Alabama Supreme Court Justice Oscar Adams. Upon learning of Lyon's qualifying for his office, Justice Adams immediately held a press conference and on the front page of the Birmingham News Lyon was labeled a "RACIST" by Justice Adams.

Lyon best summed up his political philosophy in publishing his political newsletter THE WORD:

" I think it performs a function, because one of the things that I've always crusaded against in my political life has been public officials that abuse their authority for whatever reason. I think it's the biggest political sin that they commit".

Of the seven charges brought against Lyon by the State Bar (five (5) in the original complaint with one (1) each in two amendments) he was found guilty of counts III, IV, and V in the original Complaint. Charge III alleged a violation of Rule 8.4(c) of the Code of Professional Responsibility ("CPR"):

"It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation".

Charge IV alleged a violation of Rule 8.4(d) of "CPR": "It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice".

Charge V alleged a violation of Rule 8.4(g) of "CPR": "It is professional misconduct for a lawyer to engage in any other conduct that adversely reflects on his fitness to practice law".

The record contains no evidence or fact based allegations in the State Bar's Complaint that Lyon damaged or cheated anyone out of anything by fraud, misrepresentation, deceit or otherwise (App. 26). The record further contains no evidence that Lyon's conduct, as alleged and set out in the State Bar's Complaint, in any way prejudiced the administration of justice . [When Lyon could certainly have won a seat on the Alabama Supreme Court by publishing in the State's major newspapers his photograph next to former black Justice Oscar Adams' photograph in his 1988 campaign, he did not do so as to use hate in a political judicial campaign would certainly have been prejudicial to the administration of justice.] As far as conduct that would adversely reflect on Lyon's fitness to practice law, Judge Smith testified that in Court and in preparing pleadings, Lyon's conduct was always appropriate. Lyon has a spotless record with the State

Bar and no disciplinaries on file according to witness Vicki Glassroth, a State Bar investigator. Lyon has never been found in contempt of Court during 17 year career as an attorney at law. Furthermore, Lyon has never even been late going to a court proceeding and has never failed to show up to represent a client at any hearing during his entire 17 year legal career.

The investigation which led to all of the charges brought against Lyon would best be described as a "witch hunt" (App. 10-11). The State Bar acknowledges in response to a request for admissions that its basis for bringing all the charges against Lyon was due to State Bar investigator Vicki Glassroth's conclusions and opinions of Lyon:

"The Office of the General Counsel relied upon the facts, conclusions and opinions as stated in the investigator's report (i.e. Vicki Glassroth) in drafting and filing charges against the respondent, Irvin H. Lyon".

It is interesting to note that prior to said investigation, Mrs. Glassroth, a divorcee with children from her first marriage, discussed with Lyon's ex-wife the terms of Lyon's divorce settlement. Shortly after Lyon's ex-wife filed her complaint against Lyon, the State Bar contacted Judge Patti Smith and drew her into the "witch hunt". Lyon's ex-wife successfully manipulated the State Bar to cause Lyon emotional distress, economic loss and distraction from rebuilding his law practice by making false, ludicrous, absurd and unsubstantiated charges against him. The bottom line fact of the matter is that there were no complaints or charges facing Lyon until his ex-wife teamed up with Mrs. Glassroth in an attempt to gain for Mrs. Lyon an advantage in her domestic dispute through the harassment and intimidation of Harry Lyon by the

State Bar's abuse of its investigative and prosecutorial authority. As further evidence of this abuse of authority, the State Bar brought a frivolous, ludicrous and malicious Motion to Find Respondent in Violation of the Order of the Disciplinary Board and a further Amended Motion for same, said motions were denied at a hearing on March 17, 1995, five (5) days before Lyon filed his Notice of Appeal with the Alabama Supreme Court. Lyon contends the true reason the "OGC" requested from Disciplinary Panel #2 the terms and conditions of the Probation Order at the October 21, 1994 hearing was to place a prior restraint on Lyon's United States Constitutional First Amendment right to freedom of political speech with the 91 day automatic suspension provision to force Lyon to live in fear of reprisal for expressing his political views and/or run for political office and be forced to reapply to the State Bar, which would result in a defacto full disbarment of Lyon, upon any political enemy claiming he/she was "harassed" by Lyon's exercise of said Constitutional rights of freedom of speech, expression and association. Due to the terms and conditions of said Order of suspension and probation (App.1-4), Lyon has not published "The Word" or "The Shelby News" pending the outcome of this case before this Honorable Court for fear of reprisal from the Respondent and your respondent will not publish his political ideology in the future unless this Court protects his United States Constitutional rights under the First Amendment.

It is apparent that assistant general counsel L. Gilbert Kendrick has declared himself censor of political speech for attorneys in Alabama. At the October 21, 1994 hearing Mr. Kendrick asked the Disciplinary Panel #2 to impose a 91 day suspension then and there

of Lyon so that Lyon "would have to come back to the State Bar to get that suspension lifted ".

The record reflects NO CLIENT COMPLAINTS against Lyon since he began practicing law 17 years ago, only that of his ex-wife and an attempt by the State Bar to generate testimony adverse to Lyon's Honor and good character and reputation, totally unrelated to his ex-wife's complaint, by former political adversaries or those with an obvious bias, interest and/or prejudice towards Lyon who made some bad judgment calls against Lyon in the past either politically, professionally, personally or mixed and whose testimony amounted to a justification, excuse and/or alibi for their said actions and/or failure to appropriately act.

The record further reflects Lyon has no criminal record, according to Shelby County, Alabama Chief Deputy Tom Smitherman . Deputy Smitherman also testified as to Lyon's positive reputation for non-violence and emotional stability . Lyon testified that he is over the dark side of his political past, is emotionally stable and after eight (8) consecutive political campaigns every two years in running for public office has decided to give that up for now and hopes to be able to concentrate full time on practicing law (App.26). The record also reflects Lyon's desire to publish his political memoirs spanning 15 years at a future date hoping it will inform, educate and enlighten our citizens about the ugly reality of that manipulative process known as "POLITICS" (App. 11). However, due to Respondent's actions and positions in this matter, Petitioner's desire to publish said memoirs has been chilled out of fear of reprisal by Respondent.

REASONS FOR ALLOWANCE OF THE WRIT

1. **To establish the precedent that a prosecuting authority shall not be allowed to use the testimony of a witness in a proceeding that denies a defendant his 6th and 14th Amendment rights under the United States Constitution or in the alternative the cross examination of a surprise witness should not be limited to *exclude* matters showing bias, interest or prejudice.**

Petitioner timely filed a motion to dismiss charges relating to political communications between himself and Shelby County District Judge Patricia Smith based on the respondent's prior representations to your petitioner and the disciplinary panel that Judge Smith would not be a witness against him (App. 13). That motion was denied during the hearing when the respondent informed the petitioner and the panel that Judge Smith would be testifying. Respondent intentionally lied to the petitioner regarding Judge Smith's testimony after it learned that Lyon intended to take Judge Smith's deposition in an effort to prevent the taking of same. Lyon, believing Judge Smith would not be testifying against him, did not take her deposition or prepare a defense as to charges against him relating to her honor.

This is a matter of first impression as relates to a defendant's 6th and 14th amendment rights under the United States Constitution as nowhere could your petitioner find any case law whereby a prosecuting authority engaged in such deceit and deception.

In addition, when your petitioner attempted to cross-examine Judge Smith, the chairman of the disciplinary panel refused to allow Lyon to show the bias, interest or prejudice Judge Smith had towards

your petitioner. Consider the following question which the panel chairman did not allow Judge Smith to address, to wit:

> **Q. Do you recall getting the letters from me where I pointed out that you had given different lawyers different reasons for me not getting those cases?**
> **John McBrayer, an attorney and Bill Matthews, an attorney had told me that you told them that I had originated the rumor that your first-born child was fathered by Judge Harold Walden and that was the reason that you gave me--**
>
> **Mr. Kendrick ("OGC"): I'm going to object to that.**
>
> **Q.—for not appointing me those cases?**

Mr. Kendrick's objection was sustained, the issue properly preserved (App. 23.).

Therefore the limitations placed on Lyon's cross-examination of Judge Smith relating to her direct examination and any further examination in compliance with the "English Rule" of law on cross-examination were unconstitutional as a violation of Lyon's United States Constitutional right of cross examination . 6th and 14th Amendments to the U.S. Constitution ; *Pointer v Texas*, 380 U.S. 719 (1968);*Ball v. State*, 337 So.2d 31, (Ala. Crim. App. 1976); *Scroggins v. Alabama State Board of Pharmacy*, 283 So.2d 178, (Ala. Civ. App. 1973); *Jenkins v. State*, 482 So.2d 1315, (Ala. Crim. App. 1985) .

2. That petitioner was denied his rights under the 6th and 14th amendments to the U. S. Constitution

when the disciplinary panel refused to grant Lyon's motion to suppress the telephonic depositions of his accusers (App.12). *Pointer v Texas*, 380 U.S. 719 (1968).

The depositions of Shelila Haughey, Martha Lyon, Judge and Mrs. Ralph Zehler were telephonic depositions. The use of telephonic depositions deprives the petitioner his 6th amendment right to physically face his accusers. The right to a physical face-to-face encounter with respondent's accusers is guaranteed under the 6th Amendment to the United States Constitution. See *Ohio v Roberts*, 448 U.S. 56 (1980); *Barber v Page*, 390 U.S. 719 (1968); *Pointer v Texas*, 380 U.S. 719 (1968). Respondent acknowledges that a disciplinary proceeding before the respondent is governed by the rules of Civil Procedure and is *Sui Jur* but contends that due to the nature of the possible sanctions involved upon a finding of guilt, the 6th and 14th Amendments to the U.S. Constitution should apply in such a proceeding.

3. That there exists absolutely no evidence in the record to substantiate the findings of guilt as to two of the three charges your petitioner was found guilty (i.e. fraud, dishonesty and deceit (App. 27); interference with the administration of justice (App. 28) and the third charge of conduct unbecoming an attorney (App. 28) is so vague as to be prima facie unconstitutional. Petitioner asserts he has a right under the 1st and 14th Amendments to the U.S. Constitution as well as Alabama law to have a finding of fact and conclusions of law published by the disciplinary panel in a state bar disciplinary proceeding. This issue was first raised in a post judgment motion which was denied by operation of law (App.26) and later in petitioner's brief before the Alabama Supreme Court (App. 22).

The Disciplinary Panel #2 issued an Order on October 25, 1994 simply stating a penalty and terms of probation it rendered against Lyon (App. 1). The dispositive issue here is the legal definition of the word "Decision" as embraced in Rule 12(f)(2) of the Alabama Rules of Disciplinary Procedure. Turning to Black's Law Dictionary, Revised 4th edition, 1968, "Decision" is defined as follows:

> **"The findings of fact and conclusions of law which must be in writing and filed with the Clerk".**

Hence, Rule 12(f)(2) of the Alabama Rules of Disciplinary Procedure operating as a statute under Rule 52 of the Alabama Rules of Civil Procedure, Disciplinary Panel #2 was required by law to render a findings of fact and conclusion of law. Such a holding by this Honorable Court would save it time from having to search the entire record on appeal to second guess a Disciplinary Panel's decision making process. ***14th Amendment*** **of the U.S. Constitution.**

4. The two year probationary sentence imposed by the respondent upon your petitioner has a "chilling effect" on Lyon's United States Constitutional rights under the First Amendment so as to amount to a prior restraint on his freedom of speech, particularly political speech as a journalist/attorney.

Upon an affirmance of any of the three findings of guilt by disciplinary panel #2 of the Alabama State Bar this court would be in error in affirming the probationary sentence imposed upon Lyon as the terms and conditions thereof are unconstitutionally vague and overbroad as relates to Lyon's First Amendment rights to the constitution of the United

States of America, particularly but not limited to, the chill and prior restraint it places on Lyon in exercising his said constitutional rights thereof. *First, Fourteenth Amendments* of the U.S. Constitution; *Dominic P. Gentile v State Bar of Nevada*, 111 S. Ct. R. 2720, et seq. (1991); *Standing Committee On Discipline Of the United States District Court For the Central District of California v Yagman*, 55 F. R., 3rd 1430, et seq. (1995); *Board of Airport Commissioners Of the City of Los Angeles v Jews for Jesus, Inc.*, 107 S. Ct. R. 2568 et seq. (1987); *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 110 S. Ct. 2695 (1990); *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Camp v. Yeager*, 601 so. 2d 924 (Ala. 1992), cert. denied, 122 L. Ed. 2d 122, U.S. , 113 S. Ct. 967 (1993); *Leon f. "Buddy" Kelly, Jr. v. Richard Arrington*, 624 So. 2d 546, (Ala. 1993), citing: *Deutsh v. Birmingham Post Co.*, 603 So. 2d 910 (Ala. 1992).

CONCLUSION[1]

For all of the foregoing reasons, this Court should grant *certiorari,* reverse the Supreme Court of Alabama's affirmance of respondent's October 25, 1994 Order, and this matter should either be ruled and rendered or remanded for further proceedings.

Respectfully submitted,

Irvin Harry Lyon
Pro Se
Law Offices of Honorable I. Harry Lyon, Esquire
1988 Chandalar Ct.
Pelham, AL 35124
(205) 663-1639

[1]Petitioner completed his 45 day suspension, reserved his right to appeal and did so. App. 34-35.

BEFORE THE DISCIPLINARY BOARD OF THE ALABAMA STATE BAR

IN THE MATTER OF	)	
	)	
IRVIN HARRY LYON	)	**ASB NO. 93-306**
	)	
AN ATTORNEY AT LAW	)	
	)	
IN THE STATE OF ALABAMA	)	

ORDER

This matter coming before Panel II of the Disciplinary Board of the Alabama State Bar, and the Board having held a hearing on October 21, 1994, and having heard and considered testimony and evidence presented by the Office of General Counsel and by the respondent attorney, and having heard arguments in support thereof, the Disciplinary Board hereby enters the following Order:

1. The respondent attorney, I. Harry Lyon, is hereby suspended from the practice of law for a period of forty-five (45) days effective October 21, 1994.

2. Upon completion of the period of suspension, the respondent attorney shall be on probation for a period of two years to begin to run on the forty-sixth (46th) day after the period of suspension.

3. The terms and conditions of probation are as follows:

a. Respondent shall obtain a psychiatric evaluation by a qualified mental health professional approved by the Disciplinary Board of the Alabama State Bar. If the respondent is able to establish indigency and is

thereby unable to pay the costs of such psychiatric evaluation, the respondent may apply to the Client Security Fund for payment thereof.

b. During the period of suspension and probation the respondent attorney shall have no contact with the Honorable Patricia M. Smith, District Judge of Shelby County, by telephone, by written communication, by facsimile transmission, through the United States Mail or in person.

c. During the period of suspension and probation the respondent attorney shall have no contact with the employees of the Juvenile Court System of Shelby County, other than such contact as might be necessary in the furtherance of respondent's representation of clients within the juvenile court. During the period of probation the respondent shall make no facsimile transmissions to the juvenile court concerning any matter whatsoever other than those related to a matter within the court's jurisdiction and presently pending before the court.

d. During the period of suspension and probation the respondent attorney shall not initiate any contact with Judge Ralph P. Zehler, Judge Zehler's wife, Mary Lou Zehler, or Judge Zehler's father, Ralph P. Zehler, Sr., or with Mrs. Sheila Haughey, attorney at law, all presently residing within the State of Virginia. Respondent attorney shall have no contact with the individuals or any family members of the individuals named in this paragraph, be telephone, writing or any other manner except in connection with any post-divorce litigation pending in the courts of Virginia, and that only through counsel if the respondent is represented by counsel.

e. During the period of suspension and probation the respondent attorney shall not engage in any harassing communications with any person, which shall include but not be limited to, any telephone calls to anyone other than a solicited telephone call, between the hours of 11:00 p.m. and 7:00 a.m.

f. During the period of suspension and probation the respondent attorney shall not communicate by facsimile transmission or similar means of electronic transmission with any person who has indicated the desire to the respondent not to receive such a transmission.

g. During the period of suspension and probation the respondent attorney shall report not less than once a month to a person designated by the Office of General Counsel of the Alabama State Bar as its representative, regarding the general status of respondent's practice, particularly whether the respondent is engaged in any type of dispute or having any problem with any judge before whom the respondent practices. This monthly report shall also include a status report on the post-divorce proceedings whether within the State of Alabama or in Virginia.

4. Upon completion of the psychiatric examination of the respondent, the Disciplinary Board of the Alabama State Bar shall, after consideration of the same, make a determination as to whether a Petition for Disability Inactive Status is due to be filed against the respondent attorney.

5. If during the period of suspension and or the period of probation, the respondent attorney violates or fails to comply with the terms and conditions of this Order, upon proof thereof to the satisfaction of the Disciplinary Board, the respondent shall be suspended

from the practice of law for a period of ninety-one (91) days. The respondent shall be entitled to a hearing prior to implementing the order of suspension provided that the only issue to be addressed at such hearing is whether or not the respondent attorney has violated the terms and conditions of this Order.

6. Costs of these proceedings shall be taxed against the respondent attorney, payment of same shall be made a condition of probation and shall be paid prior to the conclusion of the probationary period.

DONE this the 25th day of October, 1994.

Wanda D. Deveraux, Chairman
Disciplinary Board, Panel II
Alabama State Bar
P.O. Box 103
Montgomery, AL 36101-0103
Telephone (205) 262-6801

IN THE SUPREME COURT OF ALABAMA
October 19, 1995

1940868

Irvin Harry Lyon v. Alabama State Bar. (ASB: 93-306)

NOTICE

The application for rehearing filed in this cause is overruled. No opinion written on rehearing.

PER CURIAM - Hornsby, CJ., Shores, Houston and Butts, JJ., concur; Maddox and Cook, JJ., recused.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court. Witness my hand this 19th day of October, 1995.

Robert G. Esdale
Clerk, Supreme Court of Alabama

RELEASED
SEP 8 1995
CLERK
SUPREME COURT OF ALABAMA

STATE OF ALABAMA-JUDICIAL DEPARTMENT
THE SUPREME COURT
SPECIAL TERM, 1995

1940868

Irvin Harry Lyon v. Alabama State Bar; appeal from Alabama State Bar, ASB 93-306

PER CURIAM.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(a), Ala.R.App.P.

Hornsby, C. J. , and Shores, Houston, and Butts, JJ., concur.

Maddox and Cook, JJ., recused.

First Amendment to the United States Constitution

"Congress shall make no law representing an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble, and to perform the Government for a redress of grievances."

Sixth Amendment to the United States Constitution

"...in all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him."

Fourteenth Amendment to the United States Constitution

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which abridges the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Alabama Rules of Civil Procedure-Rule 52: Findings by the Court

(a) *effect.* In all actions tried upon the facts without a jury or with an advisory jury, the court may upon written request and *SHALL* (emphasis added) when required by statute, find the facts specially and state separately its conclusions of law thereon.

Alabama State Bar Rules of Disciplinary Procedure-Procedures: Rule 12(f)(2)

The record on appeal shall include (1) all pleadings, except those items listed in Rule 10(a), Alabama Rules of Appellate Procedure, unless the inclusion of certain such items is specifically requested by the appellant or by the General Counsel; (2) a transcript of the testimony; and (3) the *DECISION* (emphasis added) of the Disciplinary Board or the Disciplinary Commission.

Black's Law Dictionary-Revised 4th edition, 1968

Decision: "The findings of fact and conclusions of law which must be in writing and filed with the Clerk."

Note: It is the contention of petitioner that the Disciplinary Panel #2 that took testimony in ASB-93-306 and the Alabama Supreme Court on appeal of same have refused to apply the plain language of the Alabama rule 52 of civil procedure and rule 12 of disciplinary procedure to this case, therefore denying petitioner's right to due process under the 1st and 14th Amendments to the U.S. Constitution.

Alabama Rules of Professional Responsibility

Rule 8.4 (c)***

"It is professional misconduct for a lawyer to:

*****

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

Rule 8.4(d) ***

"It is professional misconduct for a lawyer to:

*****

(d) engage in conduct that is prejudicial to the administration of justice."

Rule 8.4 (g)***

"It is professional misconduct for a lawyer to:

*****

(g) engage in any other conduct that adversely reflects on his fitness to practice law."

BEFORE THE DISCIPLINARY BOARD
OF THE ALABAMA STATE BAR
IN THE MATTER OF
IRVIN HARRY LYON
AN ATTORNEY AT LAW **CASE NO.**
ASB 93-306
IN THE STATE OF ALABAMA

AMENDED ANSWER

Comes the Respondent in the above styled cause and amends his previous answer filed on his behalf by Honorable Richard W. Bell and says as follows as to ALL the charges filed against him in the above styled cause, to wit:

1. The Respondent is NOT GUILTY.

2. The Respondent relied on the protection of the First Amendment to the U.S. Constitution for everything he ever said or wrote made the basis of the Complaint and Amended Complaints in the above styled cause.

3. That the investigator for the Alabama State Bar, Mrs. Vicki Glassroth, informed Respondent initially that the Complaint filed by Complainant Martha V. Lyon, ex-wife of your Respondent, would in all likelihood be dismissed but that the Bar would proceed on a different and separate charge concerning the failure to place a disclaimer in Respondent's political newsletter THE WORD.

4. That the Respondent learned from Mrs. Glassroth that she had been through a divorce and had a nasty child custody problem and could relate to Respondent and the Complainant's divorce and child custody situation.

5. That the Complainant has used the Alabama Bar Association as a weapon in her domestic case with the Respondent and Ms. Glassroth conducted a witch hunt in obtaining information and contacting witnesses who had former and or current bias, interests or prejudices towards your Respondent to the point that the above styled matter was turned into a "witch hunt" designed to cause your Respondent emotional distress, aid Mrs. Lyon in her domestic case and cause members of the legal community and general public to question Respondent's sanity due to Respondent's efforts to obtain information about various public officials for future publication in a book entitled 'NEVER BREAK A PROMISE TO AN ANGEL".

Respectfully submitted,

_____

Honorable Harry Lyon
Pro Se
P.O. Box 21
Pelham, AL 35124

BEFORE THE DISCIPLINARY BOARD OF THE ALABAMA STATE BAR

IN THE MATTER OF
IRVIN HARRY LYON
AN ATTORNEY AT LAW
IN THE STATE OF ALABAMA
CASE NO. ASB 93-306

MOTION

Comes the undersigned respondent attorney, Honorable Harry Lyon, and moves this Honorable Disciplinary Panel to suppress the telephonic depositions of Judge and Mrs. Ralph Zehler, Martha V. Lyon and Sheila Haughey the Office of the General Counsel intends on introducing into evidence on the following grounds, to wit:

1. That the use of telephonic depositions deprives the respondent to physically face his accusers and this Honorable Panel cannot study the demeanor of said witnesses to make a determination as to their truth and veracity. The right to a physical face-to-face encounter with respondent's accusers is guaranteed under the 6th Amendment to the United States Constitution. See Ohio v Roberts, 448 U.S. 56 (1980); Barber v Page, 390 U.S. 719 (1968); Pointer v Texas, 380 U.S. 719 (1968). Respondent acknowledges that a disciplinary proceeding before the Alabama Bar Association is governed by the rules of Civil Procedure but contends that due to the nature of the possible sanctions

involved upon a finding of guilt, the 6th Amendment to the U.S. Constitution should apply in such a proceeding.

2. That the Circuit Court of Shelby County, Alabama, in case no. DR-89-326 has rendered a decision declaring the judicial action taken in Virginia relating to Judge Zehler, Martha Lyon and Sheila Haughey null and void, a copy of said Order attached hereto and incorporated herein as if fully set out. Therefore, any such former judicial proceeding does not give rise to an exception to said face-to-face encounter of witnesses.

FURTHER, said Respondent moves this Honorable Disciplinary Panel to exclude any and all testimony, documentation, letters or any other offer of evidence relating to Honorable Patricia M. Smith in that Judge Smith has informed the State Bar upon inquiry that She has not made a complaint against your respondent and does not intend to file a complaint against your Respondent and that she will not offer any testimony against your Respondent.
Wherefore, premises considered, Respondent prays that the relief requested above be granted.

Respectfully submitted,

_____

Honorable Harry Lyon
Respondent
P.O. Box 21
Pelham, AL 35124

IN THE SUPREME COURT OF ALABAMA

IRVIN HARRY LYON,
APPELLANT

VS.
CASE NO. 1940868

ALABAMA STATE BAR,
APPELLEE

MOTION TO STRIKE

Comes now Honorable Harry Lyon, Appellant in the above styled cause and moves to strike all inadmissible and illegal evidence tendered to this Honorable Court for review pursuant to the State Bar's Motion to Supplement the Record on Appeal which was reviewed and granted by Honorable Wanda Deveraux, Chairman of Disciplinary Panel II on June 29, 1995, and as grounds therefore would adopt and incorporate into this Motion to Strike all of the averments and legal arguments as set out in Lyon's two previous Objections to the State Bar's Motions to Supplement the Record on Appeal filed with this Honorable Court in June, 1995.

This Motion To Strike is made pursuant to Lyon's understanding of this Court's preferred method of review of the facts and legal arguments presented to this Honorable Court in Lyon's two previous

Objections, supra, as was related to Lyon by Honorable John Dobbs, as agent for this Court, in order for Appellant to properly preserve the issues raised therein.

Also, attached to this Motion is a copy of the Order entered by Honorable Wanda Deveraux on June 29, 1995 granting the State Bar's and Lyon's Motion to Supplement the Record. which makes no findings of facts or conclusions of law as to Lyon's said Objections, supra, in what Lyon contends is a violation of Rule 52 of the Alabama Rules of Civil Procedure, an issue made a part of Lyon's Brief and Argument filed with this Court on June 14, 1995. Mr. Gil Kendrick, Assistant General Counsel for the State Bar informed Lyon via telephone yesterday that he had presented to Honorable Wanda Deveraux copies of Lyon's Objections and Motions to Supplement the Record on Appeal which had been filed with this Court. In an abundance of caution, Lyon has this date mailed copies of his two said Objections to the State Bar and Honorable Wanda Deveraux for filing with the Disciplinary Commission so that same will be in the official record of ASB 93-306, Before the Disciplinary Board of The Alabama State Bar.

Wherefore, premises considered, Lyon moves this Honorable and Learned Court to strike the record supplemented pursuant to the motions of the State Bar and June 29, 1995 Order of Disciplinary Panel II taking into consideration Lyon's Objections, supra, thereto and prays for any other, further, additional or different relief and/or guidance (emphasis added) he may be found entitled to by this Court.

Respectfully submitted,

Honorable Harry Lyon
Attorney at Law, Pro Se
P.O. Box 21
Pelham, AL 35124

IN THE SUPREME COURT OF ALABAMA
September 6, 1995

1940868

Irvin Harry Lyon v. Alabama State Bar
ASB No. : 93-306

NOTICE

Appellant's motion to strike is denied.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.
Witness my hand this 6th day of September, 1995.

Robert G. Esdale
Clerk, Supreme Court of Alabama

BEFORE THE DISCIPLINARY BOARD OF THE ALABAMA STATE BAR

IN THE MATTER OF
IRVIN HARRY LYON
AN ATTORNEY AT LAW
CASE NO. ASB 93-306
IN THE STATE OF ALABAMA
(Supreme Court no. 1940868)

SECOND OBJECTION TO THE STATE BAR'S SECOND MOTION TO SUPPLEMENT RECORD ON APPEAL

Comes now, Honorable Harry Lyon, Respondent and Appellant in the above styled cause and would object to this Honorable Disciplinary Panel II supplementing the record on appeal as requested by the State Bar on June 16, 1995 and June 21, 1995 before the Alabama Supreme Court and June 29, 1995 [Before this Panel], and as grounds therefore would show as follows, to wit:

1. Your appellant adopts and incorporates into this, his second objection to the State Bar's two motions to supplement the record on appeal filed before the Supreme Court of Alabama and the motion to supplement the record filed before this Panel on June 29, 1995, all of the averments and prayer for relief as set forth in his first objection as if fully set out herein;

2. All of the depositions requested by the State Bar to be made a part of the record on appeal are inadmissible and illegal evidence as none are signed by the deponents as required by law and were discovery depositions and not trial depositions. *In the Matter of Bill Fite, attorney at law*, 235 So.2d 809, (S. Ct. 1970);

3. The depositions of Shelila Haughey, Martha Lyon, Judge and Mrs. Ralph Zehler were telephonic depositions. That the use of telephonic depositions deprives the respondent to physically face his accusers and this Honorable Panel cannot and did not study the demeanor of said witnesses to make a determination as to their truth and veracity. The right to a physical face-to-face encounter with respondent's accusers is guaranteed under the 6th Amendment to the United States Constitution. See Ohio v Roberts, 448 U.S. 56 (1980); Barber v Page, 390 U.S. 719 (1968); Pointer v Texas, 380 U.S. 719 (1968). Respondent acknowledges that a disciplinary proceeding before the Alabama Bar Association is governed by the rules of Civil Procedure and is *Sui Jur* but contends that due to the nature of the possible sanctions involved upon a finding of guilt, the 6th Amendment to the U.S. Constitution should apply in such a proceeding. An exception to this rule exists upon there being a prior judicial proceeding involving the identical parties as there existed in Virginia but that exception does not apply in the case at bar for the reasons set forth in numerical paragraph no. 4 below;

4. That the Circuit Court of Shelby County, Alabama, in case no. DR-89-326 has rendered a decision declaring the judicial action taken in Virginia relating

to Judge Zehler, Martha Lyon and Sheila Haughey null and void, a copy of said Order attached to the Motion your Appellant has requested the Supreme Court and this Panel to supplement the record on appeal with, [which this Honorable Panel granted on June 29, 1995], a copy of said Motion and attached Order of Alabama Judge William Speakes, previously submitted to the Supreme Court of Alabama on or about June 22, 1995, which was made a part of Appellant's original Objection, which your Appellant adopts and incorporates herein as if fully set out. Therefore, any such former judicial proceeding does not give rise to an exception to said face-to-face encounter of witnesses;

5. That the March 17, 1995 hearing was decided in Lyon's favor as to the State Bar's Motion to find Lyon in violation of the Order of the disciplinary panel and Lyon's post- judgment motions had already been denied by operation of law (C-145). If this Honorable Court or Panel decides to make the transcript of said hearing a part of the record on appeal as requested in the State Bar's second motion to supplement the record filed June 21, 1995 with the Supreme Court and again on June 29, 1995, Lyon requests that the cost of same be taxed to the State Bar as well as all other costs incurred, the premises considered.
Lyon acknowledges that the costs for same have been taxed against the State Bar pursuant to this Panel's June 29, 1995 Order and he is grateful for same.

Respectfully submitted,

Honorable Harry Lyon
Attorney at Law, Pro Se
P.O. Box 21
Pelham, AL 35124
(205) 663-1639

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of June, 1995 served a copy of the foregoing pleading on the Office of the General Counsel of the Alabama State Bar and Honorable Wanda Deveraux, Chairman of Panel II, by placing same in the U.S. mail, postage prepaid and properly addressed.

Honorable Harry Lyon

STATEMENT OF THE ISSUES

I.

Did Disciplinary Panel #2 err to reversal in not rendering a finding of fact and conclusions of law thereon in the record on appeal and/or in denying Lyon's timely post judgment motion for same under Rule 52 of the Alabama Rules of Civil Procedure, particularly but not specifically, in light of rule 12(f)(2) of the Alabama Rules of Disciplinary Procedure which refers to a "decision" made by the Disciplinary Panel?

II.

Did the record on appeal contain clear and convincing evidence that Lyon violated any or all of the three (3) charges of professional misconduct to which he was found guilty by the Disciplinary Panel #2, particularly in light of his protected rights under the First Amendment to the U.S. Constitution to exercise his freedom of expression, association and speech, particularly but not limited to, political speech?

III.

Is the allegation of "Harassment", even if proven by clear and convincing evidence, a violation, per se, of the Alabama Code of

Professional Responsibility, particularly but not specifically, in light of Lyon's rights guaranteed him under the First Amendment to the United States Constitution in his freedom of expression, association and speech?

IV.

Was your Appellant denied due process of law under the 6th and 14th Amendments to the U.S. Constitution and under Article I, 6, Const. of Ala. 1901 and by 12-21-137, Code of Alabama, 1975 in his cross examination of Judge Patricia M. Smith being limited by the Disciplinary Panel to matters relating to his response to Judge Smith's denial of considering his services for court appointed cases and were said Constitutional violations compounded by the fact that the "OGC" specifically represented to Lyon and the Disciplinary Panel, immediately prior to said October 21, 1994 hearing, that Judge Smith would not be a witness in the proceeding (R-242-243) and the fact that Judge Smith has never filed a Complaint with the State Bar against Lyon (R-243-245)?

V.

Is the decision of Disciplinary Panel #2 a nullity as a matter of law regarding any conduct of your Appellant as alleged in the State Bar's Complaint due to the fact that he was a candidate for judicial office in 1989- 1990 and 1992 and that proper original jurisdiction over Lyon rested exclusively with the Alabama Supreme Court and not the Alabama State Bar?

VI.

(A) Upon an affirmance of guilt as to any or all of the three charges of professional misconduct by this Honorable and Learned Court, did the record on appeal contain clear and convincing evidence that the probationary sentence be imposed, particularly but not limited to, the chill and prior restraint placed upon Appellant's right to freedom of speech as protected under the First Amendment to the United States Constitution as well as freedom of speech guaranteed Lyon by Article I, 4, of the Alabama Constitution, particularly but not limited to, political speech?

(B) Is not the provision in the Probationary Order of October 25, 1994 that Lyon be required to obtain a psychiatric evaluation ludicrous on its face and an attempt by the "OGC" to further harass and intimidate Lyon due to his political speech and the State Bar's attempt to quash Lyon's First Amendment Rights of future freedom of expression, association and speech?[1]

---

[1][Note: Petitioner was psychologically evaluated, tested and certified completely sane by the Respondent's hand picked psychiatrist, Dr. Bill Biedleman in December, 1995. In addition, the record before the Alabama Supreme Court contains the psychological examination and findings of Dr. Wendy Rebert that also concluded your Petitioner is completely sane, a copy of same attached to Petitioner's Application to extend time to file the writ of certiorari before this Honorable Court which was reviewed and granted by Honorable Anthony Kennedy, Associate Justice of the United States Supreme Court]

BEFORE THE DISCIPLINARY BOARD
OF THE ALABAMA STATE BAR

IN THE MATTER OF
IRVIN HARRY LYON
AN ATTORNEY AT LAW **CASE NO.**
ASB 93-306
IN THE STATE OF ALABAMA

MOTION UNDER RULES 52 AND 59 OF THE ALABAMA RULES OF CIVIL PROCEDURE

Comes Honorable Harry Lyon, respondent attorney in the above styled cause, and moves Honorable Disciplinary Panel #2 to Alter, Amend or Vacate its judgment (Order of October 25, 1994 pursuant to the hearing held October 21, 1994 which is a part of the record and adopted and incorporated herein as if fully set out) in the manner prayed for below and as grounds therefore would show as follows, to wit:

1. In said October 25, 1994 Order no findings of fact or conclusions of law were set out thereby denying your respondent due process of law as guaranteed him under the first and fourteenth amendments to the U. S. Constitution as well as the Alabama Constitution. Therefore, the Order is due to be vacated or in the alternative amended or altered in this Honorable Disciplinary Panel setting out any findings of fact or conclusions of law that would substantiate said Panel #2's factual and legal basis for its October 25, 1994 Order. That without said findings of fact and conclusions of law served upon your respondent attorney, he does not know specifically what alleged professional misconduct he can consider an appeal to

the Alabama Supreme Court. Respondent attorney contends said findings of fact and conclusions of law are required in the above styled cause under Rule 12(f)(2) of the Alabama Rules of Disciplinary Procedure which refer to a "decision" and/or under Rule 52 of the Alabama Rules of Civil Procedure. Furthermore at said hearing Respondent was informed by Honorable Wanda Deveraux, Chairwoman, that he was specifically found not guilty of charges 1, 2, 6 and 7 of the seven specific charges alleged in the original Complaint and its two amendments.

2. Specifically, your respondent attorney was found guilty of charge # 3 which would be a violation of Rule 8.4 (c)***

"It is professional misconduct for a lawyer to:

****

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

Your respondent attorney respectfully requests that the guilty verdict on this count of the Complaint be vacated as there was no evidence or no clear and convincing evidence of said respondent attorney engaging in conduct involving dishonesty, fraud, deceit or misrepresentation as to the allegations made in said

Complaint filed against said attorney which is a matter of record before this Honorable Panel.

3. Specifically, your respondent attorney was found guilty of charge #4 which would be a violation of Rule 8.4(d) ***

"It is professional misconduct for a lawyer to:

****

(d) engage in conduct that is prejudicial to the administration of justice."

Your respondent attorney respectfully requests that the guilty verdict on this count of the Complaint be vacated as there was no evidence or no clear and convincing evidence of said respondent attorney engaging in conduct that is prejudicial to the administration of justice as to the allegations made in said Complaint filed against said attorney which is a matter of record before this Honorable Panel.

4. Specifically, your respondent attorney was found guilty of charge # 5 which would be a violation of Rule 8.4 (g)***

"It is professional misconduct for a lawyer to:

****

(g) engage in any other conduct that adversely reflects on his fitness to practice law."

Your respondent attorney respectfully requests that the guilty verdict on this count of the Complaint be vacated as there was no evidence or no clear and convincing evidence of said respondent attorney engaging in any other conduct that adversely reflects on his fitness to practice law as to the allegations made in said Complaint filed against said attorney which is a matter of record before this Honorable Panel.

5. In the alternative to the above requested relief your respondent attorney would respectfully show unto this Honorable Panel #2 that under Rule 54 (d) of the Alabama Rules of Civil Procedure Costs shall be allowed to the prevailing party. As your respondent attorney successfully defended against four (4) of the seven (7) counts against him it is submitted that under the law he is the proportionate "prevailing party" and that all Costs should therefore be taxed against the Office of the General Counsel for bringing four (4) frivolous charges against your said respondent attorney. In the alternative to that prayer for relief your respondent attorney would submit that the very least equity would demand would be for the Office of General counsel to be responsible for 4/7th of the Costs incurred, the premises considered.

6. As to the said October 25, 1994 Order it is moved that said Order be vacated as to any probationary sentence and as grounds therefore would show as follows, to wit:

A. Your attorney respondent has already had a psychiatric evaluation made a part of the record in the above styled cause which shows he is fit and competent to practice law.

B. Your respondent attorney has not had any direct contact with Judge Patricia M. Smith during the past 38 months except as to sending Judge Smith a copy of the August, 1994 letter addressed to Shelby County Attorney Frank "Butch" Ellis, Jr. and said copy was faxed to Judge Smith at the direction of Senator Ellis. Furthermore, Judge Smith only objected to your respondent attorney putting her name down as a reference on his pistol permit during the hearing held on October 21, 1994 in the above styled cause and testified that she never filed a complaint with the Alabama State Bar concerning your respondent attorney, a former political opponent of hers in 1980 and former friend. Judge Smith did write your respondent attorney several years ago asking that he send her no more letters addressed to Her Honor which he in fact did stop some 38 months ago. All of the factual averments contained in those letters made an exhibit to the record are, to the best knowledge, information, recollection and belief of your respondent attorney true and correct.

C. Your respondent attorney has not faxed anything to the Juvenile Detention office of Ms. Sue Murphree upon obtaining her certified letter requesting no further fax transmissions and no evidence of said transmissions was presented at the October 21, 1994 hearing. Your respondent attorney testified that he never received the letter Probation Officer John Miller testified he had sent your respondent attorney requesting no further political fax transmissions and has not sent Mr. Miller's office any POLITICAL fax transmission since being put on actual notice of his desire not to receive your

respondent attorney's political fax newsletter "THE WORD".

D. Except for those communications approximately more than a year ago, your respondent attorney has not had any communication with anyone in the State of Virginia and has no current plans to contact anyone there except his two minor children. Any probationary restraint on your respondent attorney from communicating with anyone, anywhere and anytime is a prior restraint on respondent attorney's right to freedom of speech guaranteed him under the First Amendment to the U. S. Constitution and therefore, unconstitutional.

E. Your respondent attorney has not engaged in any communication with anyone with the intent to harass, annoy or alarm them but only to obtain information about the welfare of his minor children. Anyone can claim any communication amounts to "harassment". Furthermore, the F.B.I. investigated Judge Zehler's claim of telephone harassment approximately one year ago and apparently found no probable cause in the claim as your respondent attorney has not been arrested pursuant to said investigation and was told by the agent in charge that if your respondent attorney did not hear anything about the matter within a few months, the matter would be dropped. Judge Zehler was found to have violated your respondent attorney's constitutional rights by Honorable William Speaks, Alabama State Court Judge, said Judgment contained as an exhibit in the pleadings made a part of the record.

F. Paragraph "F" of said Order is unconstitutionally vague and is a prior restraint on respondent attorney's right to freedom of speech guaranteed him under the First Amendment to the U.S. Constitution and therefore, unconstitutional.

G. Requiring the respondent attorney to report to the office of the General Counsel about the status of his post-divorce proceedings is not within the jurisdiction of the Alabama Bar Association and an invasion of your respondent attorney's right to privacy.

H. The 45 day suspension as well as the terms and conditions of probation cast upon your respondent attorney is not appropriate to any or all of the three out of seven charges this Honorable Disciplinary Panel found him guilty of and imposed upon him and same is due to be set aside as excessive in light of the unblemished record of Honorable Harry Lyon, attorney at law.

The factual averments contained herein are verified below as to the best of your respondent attorney's knowledge, information, recollection and belief.

_____

Honorable Harry Lyon
Affiant

Sworn to and subscribed before the undersigned notary public this _____ day of November, 1994.

_____

Notary Public

Respectfully submitted,

Honorable Harry Lyon
Attorney at Law
P.O. Box 21
Pelham, AL 35124
(205) 663-1639

CERTIFICATE OF SERVICE

I hereby certify that I have this _____th day of November, 1994 hand delivered or placed the original and copy of the foregoing affidavit in the U.S. mail properly addressed and postage prepaid to the Office of the General Council of the Alabama State Bar and Honorable Wanda Deveraux, Chairwoman of Panel 2, Disciplinary Commission.

HONORABLE HARRY LYON

BEFORE THE DISCIPLINARY BOARD OF THE ALABAMA STATE BAR AND THE SUPREME COURT OF ALABAMA

IN THE MATTER OF
IRVIN HARRY LYON
AN ATTORNEY AT LAW **CASE NO.**
ASB 93-306
IN THE STATE OF ALABAMA

NOTICE OF COMPLIANCE WITH SUSPENSION ORDER-RESERVATION TO APPEAL

Comes the undersigned respondent attorney and hereby gives notice to the Honorable Disciplinary Panel II of the Alabama State Bar, the Office of General Counsel and the Honorable Supreme Court of Alabama that said attorney has fully complied with the Order of Suspension dated October 25, 1994 issued by said Disciplinary Panel II by not engaging in the practice of law from October 21, 1994 through and including December 4, 1994, said period of time constituting 45 days of suspension.

As noted in pleadings before said Disciplinary Panel II and the Supreme Court of Alabama, your respondent attorney has yet to decide whether or not to appeal to the Supreme Court of Alabama said Order of Suspension/Probation issued by said Disciplinary Panel II and specifically reserves the right to do so under the Alabama Rules of Civil Procedure pursuant to the Motion to Vacate Order currently pending before the Honorable Supreme Court of Alabama.

Respectfully submitted,

Honorable Harry Lyon
Pro Se
P.O. Box 21
Pelham, AL 35124
(205) 663-1639

CERTIFICATE OF SERVICE

I hereby certify that I have on the 5th day of December, 1994 placed the original and copy of the foregoing pleading in the U.S. mail properly addressed and postage prepaid to the Office of the General Council of the Alabama State Bar, Honorable Wanda Deveraux, Chairwoman of Panel II, Disciplinary Commission and the Office of Clerk, Supreme Court of Alabama.

HONORABLE HARRY LYON

If the law be my mistress, then she has been most expensive. **I. Harry Lyon's last thought upon completing this *writ of certiorari*.**